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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 73, Original

STATE OF CALIFORNIA,
Plaintiff,

v.

STATE OF NEVADA,
Defendant.

Reply to Counterclaim

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Reply to Counterclaim

Plaintiff State of California answers the counterclaim in this action as follows:

COUNT I

CLAIM FOR HOUGHTON-B. IVES BOUNDARY

I.

Answering paragraph I, plaintiff admits that a survey was made of that portion of the boundary line between Nevada and California from the Oregon border to the 39th degree of north latitude pursuant to agreement of the State of California and the Territory of Nevada in 1863; that said survey was conducted by California Surveyor General J. F. Houghton and Butler Ives, the Boundary Commissioner appointed by the Territory of Nevada; and that the resultant line was recognized by the California and Nevada Legis-

latures as the boundary line between the states as set forth in the statutes cited therein. Plaintiff affirmatively alleges that notwithstanding adoption of statutes referring to the "Houghton-B. Ives" line by the California and Nevada Legislatures in 1864 and 1865 respectively, that line has neither been used nor recognized by either state since 1872.

II.

Answering paragraph II, Plaintiff admits the allegations thereof except as follows: Plaintiff denies that J. C. Ives ever established a point as the intersection of the 35th degree north latitude with the Colorado River; rather, he identified but failed to monument such a point. Plaintiff further alleges affirmatively that (1) the point identified by J. C. Ives was never recognized or accepted in any survey of the California/Nevada boundary; (2) the United States Coast and Geodetic Survey identified a different point (hereinafter referred to as the "U. S. C. & G. S. point") which has been used as the intersection of the 35th degree north latitude with the Colorado River since it was set in 1899; (3) ever since 1899 said U. S. C. & G. S. point has been monumented on both sides of the river; (4) said U. S. C. & G. S. point has been recognized and acquiesced in by the States of California, Nevada and Arizona since 1900; (5) said U. S. C. & G. S. point was used in the compacts between Arizona-Nevada and Arizona and California referred to by counterclaimant; and (6) said U. S. C. & G. S. point is the most accurate designation of the intersection of the 35th degree north latitude with the Colorado River. The location of said points are more fully identified in exhibits "A" and "B" herein, being true and accurate copies of the illustrations set forth in the 1900 report of the United States Coast and Geodetic Survey, "Oblique Boundary Line Between California and Nevada," Government Printing Office, 1901.

III.

Answering paragraph III, plaintiff realleges and incorporates herein by reference each and every admission, denial and allegation contained in paragraph II set forth above with respect to identification by Lieutenant J. C. Ives of the intersection of the 35th degree of north latitude with the Colorado River. Plaintiff further denies that that portion of the "Houghton-B. Ives" line extending from its intersection with the 39th degree of north latitude to the south shore of Lake Tahoe was ever monumented in any way. Plaintiff admits each and every remaining allegation therein.

IV.

Answering paragraph IV, plaintiff admits each and every allegation therein, except as follows: Plaintiff denies that the Houghton-B. Ives line should be extended to the intersection of the 35th degree of north latitude with the Colorado River and alleges affirmatively that (1) the Houghton-B. Ives line was never extended beyond approximately 100 miles south of Lake Tahoe; (2) that portion of said line extending south of the 39th degree of north latitude was never recognized in fact or law by either state as the California-Nevada boundary; and (3) the point of intersection of the 35th degree north latitude at the Colorado River described in paragraph IV as being common to the boundaries of Arizona, California and Nevada is the one set by the United States Coast and Geodetic Survey in 1899, as more fully described in paragraph II above.

V.

Answering paragraph V, plaintiff admits each and every allegation therein, except as follows: Plaintiff denies that Allexey W. Von Schmidt "physically moved" the boundary

between the State of California and the State of Nevada and alleges affirmatively that a boundary is a legal concept incapable of being physically moved. Plaintiff further alleges upon information and belief that certain stone monuments purporting to designate the California-Nevada boundary at the north and south ends of Lake Tahoe were moved on or about the time of the Von Schmidt survey. Plaintiff is without knowledge or information sufficient to form a belief as to the identification of the person or persons who moved such monuments, and basing its denial on that ground, denies each and every allegation made with respect to Alexey W. Von Schmidt's actions with regard thereto.

VI.

Answering paragraph VI, plaintiff denies each and every allegation therein.

VII.

Answering paragraph VII, plaintiff denies each and every allegation therein.

COUNT II

ALTERNATIVE CLAIM FOR BOUNDARY FROM MAJOR'S CORNER TO THE COLORADO RIVER

VIII.

Answering paragraph VIII, plaintiff State of California realleges and incorporates by reference each and every admission, allegation and denial contained in its answer to count I of the counterclaim herein.

IX.

Answering paragraph IX, plaintiff admits that Daniel G. Major set a point purporting to be the northeastern corner of California and monumented said point in 1868; and that the monument set by Major remains standing intact. Plain-

tiff denies that the point set by Major was located at the intersection of the 120th meridian with the 42nd degree of north latitude, and further denies that the California-Nevada boundary was conclusively established thereby. Plaintiff affirmatively alleges that the point set by Major was, in fact, never relied on in any recognized survey of the California-Nevada boundary.

X.

Answering paragraph X, plaintiff denies each and every allegation therein.

XI.

Answering paragraph XI, plaintiff denies each and every allegation therein.

COUNT III

ALTERNATIVE CLAIM FOR THE "VON SCHMIDT" BOUNDARY IN ITS ENTIRETY

XII.

Answering paragraph XII, plaintiff State of California realleges and incorporates each and every admission, allegation and denial set forth in answer to counts I and II of the counterclaim set forth above.

XIII.

Answering paragraph XIII, plaintiff admits that the boundary between California and Nevada from the 39th degree of north latitude to the Oregon border was first established by Allexey W. Von Schmidt in the years 1872-1874. Plaintiff further admits that a survey purporting to fix the California-Nevada boundary from the 39th degree of north latitude southeastward to the intersection of the 35th degree of north latitude and the Colorado River (hereinafter referred to as the "oblique boundary") was made by

Allexey W. Von Schmidt in 1872-1874. Plaintiff denies that the said line extending southeastward from the 39th degree of north latitude to the Colorado River was in fact a true survey of the California-Nevada boundary and alleges affirmatively that (1) said line was only observed for a short period from approximately 1874-1899; (2) from its inception, it was recognized as being inaccurate; (3) subsequently, that boundary was marked, surveyed and monumented on the ground by the United States Coast and Geodetic Survey in the period 1893-1899; and (4) the United States Coast and Geodetic Survey line extending from Lake Tahoe to the Colorado River has been recognized by statute and acquiesced in by both the States of California and Nevada and their citizens since it was established and monumented in 1893.

XIV.

Answering paragraph XIV, plaintiff admits that the United States government, at the request of the State of California, undertook a new survey of the oblique boundary between California and Nevada between Lake Tahoe and the Colorado River. Plaintiff denies that the previous Von Schmidt line was "physically moved." Plaintiff is without knowledge or information sufficient to form a belief as to the truth of counterclaimant's allegation that such action was taken without the prior and express consent of the State of Nevada; and basing its denial on that ground, denies said allegation. Plaintiff affirmatively alleges that said survey was done with the implied consent of the State of Nevada and that the State of Nevada has acquiesced in and recognized said line since its inception in 1899. Plaintiff further alleges that (1) the State of California accepted said line by statute in 1901 (Cal. Stats. 1901, ch. 73, p. 89); said statute

has never been amended or repealed and remains in effect today; and California has exercised jurisdiction over all lands west of said line ever since 1900 without objection from the State of Nevada; (2) the State of Nevada accepted said line in 1903 by a statute which has never been amended or repealed and remains in effect unchanged today (Nev. Stats. 1903, ch. 15, p. 38).

XV.

Answering paragraph XV, plaintiff denies each and every allegation thereof.

XVI.

FIRST AFFIRMATIVE DEFENSE

By way of affirmative defense, plaintiff alleges that the line set by the United States Coast and Geodetic Survey in 1893-1900 establishing the oblique boundary between California and Nevada from the 39th degree north latitude southeastward to the intersection of the 35th degree of north latitude and the Colorado River accurately sets forth the boundary between those states; that said line has been acquiesced in since 1900 by both California and Nevada in the exercise of civil and criminal jurisdiction and in taxing and establishment of districts of all kinds; that it has been recognized since 1900 as the boundary between those states since its establishment; and that it has been recognized by the United States since 1900 in the exercise of civil and criminal jurisdiction, in the administration of the public lands, and in all other respects.

XVII.

SECOND AFFIRMATIVE DEFENSE

For a further and separate affirmative defense, plaintiff alleges that defendant had notice of all the facts set forth in its amended answer and counterclaim since the surveys

complained of were made and monumented in the years 1893-1900 and nevertheless has refrained from asserting its counterclaim until April 21, 1978. From 1900 to the present time, plaintiff State of California and its citizens selected public lands, obtained patents, constructed buildings and residences, collected taxes, and generally exercised civil and criminal jurisdiction in reliance upon the line set by the United States Coast and Geodetic Survey in the years 1893-1900. Defendant has thereby been guilty of laches and should be barred from maintaining this counterclaim.

WHEREFORE, plaintiff prays:

1. That a decree be entered adjudging the eastern boundary of California between the 39th and 42nd degrees north latitude to be the line surveyed and monumented by Allexey W. Von Schmidt in 1872-1874, commonly known as the "Von Schmidt line";

2. That in the alternative, should the Court not adjudge the eastern boundary of California between the 39th and 42nd degrees latitude to be the "Von Schmidt line," a new survey be ordered by the Court to determine the true location of the meridian 120 degrees of longitude west from Greenwich between the 39th and 42nd degrees of north latitude;

3. That this Court enter a decree adjudging the eastern boundary of the State of California from the intersection of the 39th degree of north latitude with the 120th degree of longitude west from Greenwich to the intersection of the 35th degree north latitude and the Colorado River to be the line surveyed, established and marked by the United States Coast and Geodetic Survey as completed in 1900;

4. That a decree be entered adjudging that the State of Nevada has no right, title or interest by virtue of its sovereignty in any lands west of the "Von Schmidt line"

between the 39th and 42nd degrees north latitude and perpetually enjoining the defendant from asserting any right or interest to said land or any part thereof and from interfering with possession of California in said land;

5. That a decree be entered adjudging that the State of Nevada has no right, title or interest by virtue of its sovereignty to any lands west of the line established and marked by the United States Coast and Geodetic Survey as completed in 1900 from the intersection of the 39th degree of north latitude with the 120th degree of longitude west of Greenwich to the intersection of the 35th degree north latitude and the Colorado River, and perpetually enjoining the defendant from asserting any right, title or interest to said land or any part thereof or from interfering with possession of California in said land;

6. That in the alternative, should the Court not adjudge the eastern boundary of California between the intersection of the 39th degree north latitude with the 120th degree of longitude west from Greenwich to the intersection of the 35th degree of north latitude and the Colorado River as established and marked by the United States Coast and Geodetic Survey completed in 1900 to be the lawful eastern boundary of California, a new survey be ordered by the Court to determine the true location of such boundary and that a decree be entered adjudging the line determined by such Court-ordered survey to be the eastern boundary of California between the intersection of the 39th degree of north latitude with the 120th degree of longitude from Greenwich to the intersection of the 35th degree of north latitude and the Colorado River;

7. That defendant recover nothing from its counterclaim herein;

8. For plaintiff's costs of suit herein; and
9. For such other and further relief as may be proper.

DATED: July 19, 1978.



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